

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE FRAKI,

Plaintiff-Appellant,

v

DENNIS FRAKI,

Defendant-Appellee.

UNPUBLISHED

May 29, 2014

No. 311304

Houghton Circuit Court

LC No. 2010-014694-CH

Before: BECKERING, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

In this quiet title action, plaintiff, George Fraki, appeals as of right¹ the trial court's June 26, 2012 order. For the reasons stated below, we affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This case involves a dispute among family members regarding ownership interests in certain real property. Roy Fraki and Emma Fraki, husband and wife, lived in a residence located on land they leased from the Copper Range Development Company (CRDC). In 1985, Roy died, and CRDC sold the leased property to Emma and plaintiff, Emma's son, as joint tenants with full rights of survivorship and not as tenants in common.

¹ For the reasons set forth in our October 25, 2012 order, we reject defendant's contention that this Court lacks jurisdiction, in whole or in part, over this claim of appeal. Defendant does not contest that plaintiff timely filed an appeal of right from the trial court's June 26, 2012 order. To the extent defendant argues that plaintiff's first three issues raised on appeal are outside the scope of his appeal of right, we agree. The trial court's April 12, 2012 order, from which these issues arise, constituted a final order under MCR 7.202(6)(a)(i), and plaintiff did not timely appeal that order. Plaintiff should have filed an application for leave to appeal with respect to that order and sought consolidation with his appeal of right. MCR 7.203(B)(5). However, for the sake of judicial economy, we exercise our discretion and treat plaintiff's issues regarding the April 12 order as on leave granted. See MCR 7.203(B)(5); *In re Morton*, 258 Mich App 507, 508 n 2; 671 NW2d 570 (2003).

In 1998 and 2003, Emma executed quitclaim deeds purporting to transfer her one-half interest in the property to herself and defendant, Dennis Fraki, another son of hers. The deeds designated Emma and defendant as “joint tenants with full rights of survivorship and not as tenants in common”² At some point in 2002, Emma entered a nursing home, and in 2006 she was declared incompetent.

In 2010, plaintiff filed this suit challenging the validity of defendant’s interest in the subject property. Plaintiff argued that the 1998 and 2003 deeds were the product of fraud, undue influence, and lack of capacity on the part of his mother. Plaintiff also contended that the 1998 deed was invalid because it lacked proper acknowledgment. In addition to seeking to quiet title, plaintiff sought monetary damages arising out of defendant’s use of the property.

The case proceeded to a bench trial. Following trial, the trial court found that both the 1998 and the 2003 deeds effectively conveyed an interest in the subject land to defendant. With regard to the 1998 deed, the court found that although it was improperly notarized, the deed was nevertheless valid. The court found insufficient evidence to establish fraud, undue influence, or misrepresentation, or that Emma lacked the requisite capacity or intent to sign the deed and transfer her interest in the land. With regard to the 2003 deed, the trial court found that it also effectively conveyed an interest in the land to defendant, and that plaintiff submitted insufficient evidence to establish undue influence, fraud, or that Emma lacked the capacity to transfer her interest. The court determined that defendant possesses a joint life estate with Emma and the right to use the property. Noting plaintiff’s burden of proof by a preponderance of the evidence, the trial court entered a no cause of action with regard to plaintiff’s claim for money damages.

Following trial, plaintiff moved for a hearing on damages pursuant MCR 3.411(E), seeking one-half of the reasonable value of the use of the premises for the time the premises were withheld from his use. The trial court denied the motion, as well as plaintiff’s motion for reconsideration.

II. VALIDITY OF THE 1998 DEED

Plaintiff first argues that the trial court erred in holding that the 1998 quit claim deed was valid because it lacked an appropriate acknowledgment of a notary public and was the product of fraud and undue influence.

An action to quiet title is an equitable action. *Beach v Lima Twp*, 489 Mich 99, 106; 802 NW2d 1 (2011). Whether a conveyance is invalid because of undue influence is also an equitable matter. *Adams v Adams*, 276 Mich App 704, 714 n 5; 742 NW2d 399 (2007). While we review equitable matters de novo, *Beach*, 489 Mich at 106, the standard of review for findings of fact made by a trial court is whether those findings are clearly erroneous. *Capital Properties Group, LLC v 1247 Ctr Street, LLC*, 283 Mich App 422, 430; 770 NW2d 105 (1999). “A finding is clearly erroneous when, although there is evidence to support it, the reviewing

² Emma and defendant engaged in other transactions that are not the subject of this appeal.

court on the entire record is left with a definite and firm conviction that a mistake was made.” *Roberts v Farmers Ins Exch*, 275 Mich App 58, 66; 737 NW2d 332 (2007) (citation omitted).

At trial, plaintiff presented evidence that the 1998 deed, which purported to contain the signature of a notary, was not properly witnessed by the notary. The trial court found that Emma signed the deed, and that she did so before two witnesses, Martha Bohto and Louis Zenner. Although the trial court found that the notarization of the document was improper, it concluded that this defect did not render the deed invalid because there was no evidence that Emma did not intend to sign the deed in good faith. The trial court concluded that pursuant to MCL 565.604, the defect in the deed was cured.

In general, in order to execute a deed, the grantor must follow certain formalities. MCL 565.8 provides, in pertinent part, that “[d]eeds executed within this state of lands, or any interest in lands, *shall be acknowledged before any judge, clerk of a court of record, or notary public within this state.*” (Emphasis added). However, a grantor need not strictly adhere to the formalities set forth in MCL 565.8. See, e.g., MCL 565.604; *Irvine v Irvine*, 337 Mich 344, 352; 60 NW2d 298 (1953). In pertinent part, MCL 565.604, which acts as a general curative provision, provides:

No conveyance of land or instrument intended to operate as such conveyance, made in good faith and upon a valuable consideration, whether heretofore made or hereafter to be made, shall be wholly void by reason of any defect in any statutory requisite in the sealing, signing, attestation, acknowledgment, or certificate of acknowledgment thereof

Thus, MCL 565.604 operates to cure defects in a deed when the deed (1) is made in good faith, and (2) is conveyed upon valuable consideration.

We conclude that the trial court did not err when it found that the defect in the deed was cured pursuant to MCL 565.604. The trial court noted that no evidence was introduced to prove that Emma did not intend to convey an interest in the subject property to defendant or sign the deed in good faith, and there is no evidence in the record to suggest that such a finding was clearly erroneous. Plaintiff challenges whether the one dollar consideration set forth in the deed is enough to constitute valuable consideration; however, we generally do not inquire into the adequacy of consideration. *General Motors Corp v Dep’t of Treasury*, 466 Mich 231, 239; 644 NW2d 734 (2002) (quotation and citation omitted) (“It has been said [a] cent or a pepper corn, in legal estimation, would constitute a valuable consideration.”). As such, the trial court did not err by finding that, pursuant to MCL 565.604, the 1998 deed was effective notwithstanding the lack of proper notarization.

Furthermore, we find that the trial court did not clearly err in concluding that Emma's signing of the 1998 deed was not the product of undue influence. In *In re Erickson*, 202 Mich App 329, 331; 508 NW2d 181 (1993), this Court stated:

To establish undue influence it must be shown that the grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency, and impel the grantor to act against the grantor's inclination and free will. Motive, opportunity, or even ability to control, in the absence of affirmative evidence that it was exercised, is not sufficient. *Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976).

A presumption of undue influence arises upon the introduction of evidence that would establish (1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary, (2) the fiduciary, or an interest represented by the fiduciary, benefits from a transaction, and (3) the fiduciary had an opportunity to influence the grantor's decision in that transaction. *Id.*³

"A fiduciary relationship . . . exists when there is a reposing of faith, confidence, and trust and the placing of reliance by one on the judgment and advice of another." *Farm Credit Servs of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 680; 591 NW2d 438 (1998).

Here, the trial court found that no evidence was introduced to prove that Emma was subjected to threats, undue flattery, or any other coercion or influence that overcame her free will at the time she executed the 1998 deed. The trial court also found that a presumption of undue influence did not arise in regard to the 1998 deed because the proofs did not establish the existence of a fiduciary relationship at that time. Our review of the record reveals that the trial court's findings were not clearly erroneous. Indeed, plaintiff failed to present any evidence that Emma was unduly influenced at the time she executed the 1998 deed. Further, contrary to plaintiff's contentions, he failed to present any evidence to support a presumption of undue influence because the record is void of any indication that defendant or anyone else served Emma as a fiduciary in 1998. See *Mannausa v Mannausa*, 370 Mich App 180, 184; 121 NW2d 423 (1963) (recognizing that a parent-child relationship, without more, is insufficient to establish a fiduciary relationship). Although defendant was subsequently in a fiduciary relationship with Emma when he became her patient care advocate in 2002 and 2003 under a durable power of attorney document, he was not in this role, or in any other fiduciary relationship with Emma, in 1998. Thus, the 1998 deed was not the product of undue influence, and plaintiff's challenges to the 1998 deed are without merit.

³ *Kar* was overruled on other grounds by *In re Estate of Karmey*, 468 Mich 68, 75; 658 NW2d 796 (2003) (holding that no presumption arises by the fact of marriage alone).

III. INTEREST CONVEYED BY THE 1998 DEED

Plaintiff also contends that the 1998 deed was invalid because a joint tenant with full rights of survivorship cannot convey that tenant's interest to both herself *and* a third person. Plaintiff did not raise this issue before the trial court; thus, the issue is unpreserved and we could decline to review the matter. *Nuculovic v Hill*, 287 Mich App 58, 63; 783 NW2d 124 (2010). Nevertheless, we find the issue to be without merit.

We begin our analysis by examining the interests involved in this case. The deed executed by the CRDC on December 5, 1985, transferred the property to Emma and plaintiff as "joint tenants with full rights of survivorship and not as tenants in common." This form of transfer created "a joint life estate with dual contingent remainders." *Albro v Allen*, 434 Mich 271, 275; 454 NW2d 85 (1990). Thus, following the 1985 transfer by CRDC, Emma and plaintiff held joint life estates with dual contingent remainders. See *id.* In 1998, Emma transferred her interest to herself and defendant as joint tenants with full rights of survivorship.⁴ Thus, following the 1998 deed, Emma and defendant held, as joint tenants with full rights of survivorship, Emma's life estate and contingent remainder.

There is no merit to plaintiff's position, for which he fails to cite any authority in support, that Emma could not convey her interest in the property—a life estate and a contingent remainder—to defendant and herself as joint tenants with full rights of survivorship. Our Supreme Court held in *Albro* that a party who holds a joint life estate with a dual contingent remainder may transfer her interest to a third party. *Id.* at 281, 287. Such a transfer does not destroy the contingent remainder or the other joint tenant's right of survivorship. *Id.* at 281. Furthermore, contrary to plaintiff's position, the transfer effectuated by the 1998 deed was not invalid simply because Emma named herself as a grantee along with defendant. See MCL 565.49. Indeed, there is no authority for the position that Emma was not permitted to convey her interest in the property to herself and defendant as joint tenants with full rights of survivorship. Emma did not, by the 1998 deed, purport to transfer a greater estate than that which she possessed or could legally convey. See MCL 565.4; *Albro*, 434 Mich at 281. As such, we find that there is no merit to plaintiff's unpreserved issue.

Having rejected plaintiff's claims, we briefly clarify the interests held by each party in this case. As explained by our Supreme Court in *Albro*:

The contingent remainder of either cotenant may not be destroyed by any act of the other. Thus, we hold that either cotenant may transfer her interest in the joint life estate and such a transfer has no effect on the contingent remainders. Upon the death of either of the original cotenants, the other cotenant, or any person to whom she has transferred her contingent remainder, takes the whole estate. [*Id.* at 287.]

⁴ Although inartfully drafted, we find that the deed unambiguously purports to convey Emma's entire interest in the property to herself and defendant as joint tenants with full rights of survivorship.

In the case at bar, Emma conveyed her half interest in the property to herself and defendant as joint tenants with full rights of survivorship. In doing so, Emma conveyed to herself and defendant a joint tenancy in Emma's life estate for the life of Emma,⁵ along with Emma's contingent remainder. *Id.* at 281, 287. The life estate will terminate upon the death of either Emma or plaintiff, the original cotenants. *Id.* If plaintiff predeceases Emma, then, upon plaintiff's death, Emma's contingent remainder will be realized and she will acquire, along with defendant as a joint tenant with full rights of survivorship, the property in fee. *Id.* at 281 n 2. Under this scenario, plaintiff's interest in the property would expire upon his death. However, if Emma predeceases plaintiff, then plaintiff's contingent remainder will be realized and plaintiff will acquire the land in fee. *Id.* Under such a scenario, defendant would no longer have any interest in the property, his rights having expired upon Emma's passing.

IV. VALIDITY OF THE 2003 DEED

Next, plaintiff argues that Emma was incompetent when she signed the 2003 quitclaim deed; thus, the 2003 deed did not effectively convey an interest in the property to defendant. Because the 1998 deed was valid, the validity of the 2003 deed has no effect on the outcome of this appeal and thus becomes a moot issue. *Ryan v Ryan*, 260 Mich App 315, 330; 677 NW2d 899 (2004). Indeed, the 2003 deed purports to transfer the same interest from Emma to defendant that Emma had already transferred in the 1998 deed. We need not consider whether a subsequent deed purporting to transfer the same interest that had already been lawfully transferred was valid.

V. PLAINTIFF'S CLAIM FOR DAMAGES

Plaintiff's final argument on appeal is that the trial court erred in denying his motion for a damages hearing under MCR 3.411(E) after the trial court issued its rulings following the bench trial.

In his complaint, plaintiff sought to obtain money damages for various alleged wrongs by defendant associated with the property. Specifically, plaintiff alleged that defendant wrongfully enjoyed the possession and use of the property without compensating Emma or plaintiff, prevented plaintiff's quiet use and enjoyment of the property by denying him access, committed waste upon the property by neglect and failure to maintain it, and that plaintiff had incurred all of the property taxes and insurance on the property since 2003. In his opening statement, plaintiff addressed these allegations, which he claimed supported his entitlement to money damages. Following the bench trial, the trial court found that plaintiff had admitted insufficient evidence to establish his entitlement to money damages, and thus, entered a no cause for action on this claim.

On May 7, 2012, plaintiff moved the trial court for a hearing on damages pursuant to MCR 3.411(E). Plaintiff claimed he was entitled to one half of the reasonable value of the use of the premises during the time the premises were withheld from plaintiff's use. The trial court

⁵ See MCL 565.4 (declaring that a grantor may not grant a greater estate than that which she possessed or could lawfully convey). See also *Albro*, 434 Mich at 281.

denied plaintiff's motion on the basis that MCR 3.411 was inapplicable under the facts presented in this case. The court reasoned that the court rule contemplates exclusion from the premises by one without an interest in the premises, and here, both parties had an interest in the premises. The trial court subsequently denied plaintiff's motion for reconsideration, noting that the parties were given a full opportunity to present proofs in support of their respective claims at trial, and that plaintiff presented insufficient evidence to support his claim for damages, leading to a no cause for action on that claim.

On appeal, plaintiff contends that the trial court erred by denying him a damages hearing pursuant to MCR 3.411(E) so that he could be compensated for defendant's having withheld from him possession of the premises.⁶ "We review issues of law, including the interpretation and application of court rules . . . de novo." *Huntington Nat'l Bank v Ristich*, 292 Mich App 376, 383; 808 NW2d 511 (2011). MCR 3.411(A) provides, in pertinent part, that "[t]his rule applies to actions to determine interests in land under MCL 600.2932." As referenced in MCR 3.411(A), MCL 600.2932 applies to any plaintiff "who claims any right in, title to, equitable title to, interest in, or right to possession of land . . ." and who brings an action against another who claims an interest that is inconsistent with the plaintiff's interest. Pursuant to MCR 3.411(D)(1), "[a]fter evidence has been taken, the court shall make findings determining the disputed rights in and title to the premises." MCR 3.411(E)(1) provides that within 28 days after the finding of title, "the party found to have title to the premises" may file a claim against "the party who withheld possession of the premises for the reasonable value of the use of the premises during the period the premises were withheld." MCR 3.411(E)(2) provides that the trial court "shall hear evidence and make findings, determining the value of the use of the premises."

We find that MCR 3.411(E) did not entitle plaintiff to a damages hearing. The plain language of MCR 3.411(E)(1) permits a party to file a claim against the party "who withheld possession of the premises . . ."⁷ As noted above, although plaintiff specifically alleged in his complaint that defendant denied him access to the property and sought damages for same, he produced no evidence at trial to establish this fact. Further, the rule specifies that the hearing to which a deserving party is entitled is one to "determin[e] the *value* of the use of the premises," and contains no mention of a hearing to determine *whether* the other party withheld possession of the premises. MCR 3.411(E)(2) (emphasis added). Thus, pursuant to the plain language of MCR 3.411(E), plaintiff was not entitled to a post-trial hearing to determine the value of his damages—for which he had received a no cause for action at trial. As the trial court pointed out, plaintiff was given a full opportunity to present his proofs at trial in order to support his claim of

⁶ Plaintiff has not appealed the trial court's ruling with respect for his claim for damages arising from defendant's use of the property, defendant's alleged waste upon the property, or plaintiff's costs and expenses associated with the property.

⁷ In contrast to many cases, the parties were not dealing with competing interests in the property, such that one had a right to possession and use and the other did not. Rather, at issue was whether defendant had an interest in the property *in addition* to plaintiff. Plaintiff did not provide any evidence to establish that he was denied possession and use in keeping with his undisputed interest in the property.

entitlement to money damages, but he failed to do so. In his opening statement plaintiff addressed the factual allegations underlying his request for monetary damages, yet he produced no supporting evidence. Plaintiff should not be afforded a second opportunity to present evidence on a claim he raised and for which he received a full and fair opportunity to argue and present substantiating evidence at trial. See *Auto Club Ins Ass'n v Williams*, 179 Mich App 401, 408; 446 NW2d 321 (1989) (“Plaintiff is not entitled to a second bite at the apple.”).

Affirmed.

/s/ Jane M. Beckering
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra